



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

September 22, 2016

2016 Interim No. 5

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Tuesday, October 11, 2016

Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

Thursday, October 13, 2016

Revenue Estimating Conference

11:00a.m., Governor's Large Conference Room, Statehouse

Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, October 11, 2016, 9:00 a.m.

LSA Contacts: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Agenda: To be announced.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

Revenue Estimating Conference

Location: Governor's Large Conference Room, Statehouse

Date & Time: Thursday, October 13, 2016, 11:00 a.m.

Contact Persons: Jeff Robinson, LSA Fiscal Services, (515) 281-4614; Joel Lunde, Department of Management, (515) 281-7072.

Agenda: To be announced.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=627>

HEALTH POLICY OVERSIGHT COMMITTEE

August 29, 2016

Co-chairperson: Senator Amanda Ragan

Co-chairperson: Representative David Heaton

Background. The Health Policy Oversight Committee (HPOC) of the Legislative Council was established as a permanent legislative committee of the Legislative Council under Iowa Code section 2.45 in 2015 Iowa Acts, chapter 137, section 64, as amended by 2016 Iowa Acts, chapter 1139, section 97:

“The legislative health policy oversight committee, which shall be composed of ten members of the general assembly, consisting of five members from each house, to be appointed by the legislative council. The legislative health policy oversight committee shall meet at least two times, annually, during the legislative interim to provide continuing oversight for Medicaid managed care, and to ensure effective and efficient administration of the program, address stakeholder concerns, monitor program costs and expenditures, and make recommendations.”

In addition, under 2015 Iowa Acts, chapter 137, section 63, as amended by 2016 Iowa Acts, chapter 1139, section 102, the committee is tasked with receiving the quarterly compilations of the input and recommendations of the monthly public meetings convened by the Department of Human Services (DHS) beginning in March 2016, and the bi-monthly meetings beginning March 2017 and continuing through December 31, 2017. The Legislative Council appointed the 10 members of the committee, including Senator Amanda Ragan and Representative David Heaton as co-chairpersons.

Department of Human Services (DHS) Review of Iowa Health Link Quarterly Report. Mr. Chuck Palmer, Director, DHS; Ms. Mikki Stier, Medicaid Director, DHS; Ms. Jean Slaybaugh, Chief Financial Officer, DHS; and Ms. Liz Matney, Managed Care Organization (MCO) Oversight and Supports, Bureau Chief, DHS, reviewed the MCO Report on First Quarter Performance Data, published on August 26, 2016. The report reflects the initial three months of Medicaid managed care. Ms. Matney noted that as time moves forward and additional data is collected, DHS will have more robust data to better measure outcomes, identify trends, and adjust information reported. Data elements reviewed included member enrollment; population reporting including special needs populations; case management ratios; grievance and appeals processes and outcomes; critical incidents reports; timely completion of service plans for members receiving waiver services; level of care assessments; helpline services; medical and pharmacy claims paid, denied, or suspended; utilization of value-added services; provider network adequacy; prior authorization; minimum medical loss ratio and administrative loss ratio; program cost savings to date; value-based purchasing; health care outcomes; and remedies.

Report of Public Input Sessions. Mr. Gerd Claybaugh, Director of Public Health and current Chairperson of the Medical Assistance Advisory Council (MAAC) and of the MAAC Executive Committee, and Mr. Anthony Carroll, current member of the MAAC and of the Executive Committee, provided a report regarding implementation of changes to the MAAC and MAAC Executive Committee required pursuant to 2016 Iowa Acts, chapter 1139, sections 99 through 102, and the results of the public input sessions being held throughout the state to provide for input and feedback on Medicaid managed care.

Updates on Managed Care Processes and Committee Discussion with the MCOs. The committee received updates on electronic billing versus paper billing, clearinghouses, and claims submissions and processing time frames and discussed various issues with representatives of the MCOs including Ms. Cheryl Harding, Market President, AmeriHealth Caritas Iowa; Ms. Cynthia McDonald, Plan President, Amerigroup; and Ms. Kim Foltz, Chief Executive Officer, UnitedHealthcare Plan of the River Valley, Inc.

Public Comment. The committee received public comment. Additional public comments were submitted in writing and are posted on the committee's webpage. Those public comments not submitted in writing will be summarized in the minutes of the meeting.

Committee Discussion and Next Steps. The committee discussed the format and length of the second meeting to be held during the 2016 interim following receipt of the second Iowa Health Link quarterly report. The co-chairpersons agreed that the second meeting would be longer in length and provide sufficient time for discussion.

Committee Documents. Documents distributed at the meeting, including the written presentations submitted by DHS and the MCOs, are posted on the committee's webpage: <https://www.legis.iowa.gov/committees/committee?ga=86&groupID=24165>.

LSA Contacts: Patty Funaro, Legal Services, (515) 281-3040; Ann Ver Huel, Legal Services, (515) 281-3837
Internet Site: <https://www.legis.iowa.gov/committees/committee?ga=86&groupID=24165>

ADMINISTRATIVE RULES REVIEW COMMITTEE

September 13, 2016

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered two filings:

Department of Homeland Security and Emergency Management - E911-Surcharge. EMERGENCY FILING APPROVED BY COMMITTEE.

Department of Transportation -Surface Transportation Block Grant Program. EMERGENCY FILING APPROVED BY COMMITTEE.

REVENUE DEPARTMENT, *Excise Tax Rate on Motor Fuels*, 8/31/16 IAB, ARC 2698C, ADOPTED.

Background. This rulemaking implements changes to the tax rates on motor fuels effective July 1, 2016. The changes in the tax rates on motor fuels reflect changes in the ethanol distribution percentage for calendar year 2015. Under Iowa Code section 452A.3(1) and department rules, the rate of excise tax on motor fuels for the fiscal year is based on the ethanol distribution percentage as measured in the previous calendar year.

Commentary. Discussion centered on the source of the data used by the department to calculate the new tax rate. Department representative Ms. Victoria Daniels explained that the department has the authority to determine the source of the data it uses by rule, and the department's current rules use a report from motor fuel suppliers. Ms. Daniels suggested that, in light of changes in the motor fuel industry relating to blending ethanol at the pump, using a report from motor fuel retailers might provide more accurate data. Ms. Daniels also indicated that the department is hesitant to change the report it uses by rule and that the matter would be more appropriately considered through legislative action. Committee members noted that this rulemaking is estimated to reduce revenue to the Road Use Tax Fund by \$9.1 million and expressed concern regarding the loss of revenue due to data that may not be as accurate as possible. Committee members asked about the possible consequences of imposing a delay on this rulemaking, and Ms. Daniels said she would have to consult department legal counsel to determine that.

Action. A motion for a 70-day delay failed on a four-to-four vote with two members absent (seven votes required to pass).

NATURAL RESOURCE COMMISSION, *Nursery Stock Prices*, 8/31/16 IAB, ARC 2693C, ADOPTED.

Background. This adopted and filed rulemaking increases the nursery stock prices of tree and shrub seedlings and specialty packets sold by the State Forest Nursery (Nursery) of the Department of Natural Resources (DNR). It also removes the price for black walnut tree seeds because those are no longer sold by the Nursery. This rulemaking is identical to the noticed version published in the June 8, 2016, bulletin and was adopted by the Natural Resource Commission on August 11, 2016.

Commentary. State Forester Mr. Paul Tauke explained that Iowa Code section 455A.13 requires the Nursery to establish prices by rule that will cover all expenses related to the Nursery's operations. Mr. Tauke stated the Nursery received 58 comments. Of the germane comments, about 80 percent supported the price increases to maintain the operation of the Nursery going forward. The comments against the rulemaking sought to lower or maintain the prices at past levels.

Mr. Tauke received questions from committee members about alternatives to raising prices. Mr. Tauke indicated that he, along with the director and deputy director of DNR, reviewed the Nursery's operational costs and the costs of some long-needed upgrades. He noted that the last price increase for small stock occurred in 2004 and in 2009 for large stock. He explained that demand for seedlings has declined as use of the federal Conservation Reserve Program has decreased since around the mid-1990s. Before increasing these prices, the Nursery decreased staff, consolidated some positions, and closed one of its nurseries. It also reduced these increased prices after an internal review before initiating the rulemaking process. Mr. Tauke explained that the Nursery's new seedling prices are still somewhat lower than out-of-state alternatives and the product is generally considered to be better than offerings from other states.

(Administrative Rules Review Committee continued from Page 4)

Mr. Chuck Semler, President of the Iowa Woodland Owners Association, spoke in favor of the rulemaking. He was joined by a board member of that association, Mr. David Bartemes, who also operates a tree farm. Mr. Bartemes expressed the importance of supporting the Nursery, citing the impending need for farmers to establish or improve riparian zones on their farmland. He cited that aside from the Nursery, there are very few available sources of good seedlings from Iowa-based seed stock.

Ms. Carol Teator, Director of Programs for Trees Forever, spoke in favor of the rulemaking, as did Mr. Shane Morris, the owner of Northeast Iowa Trees. Mr. Morris described the Nursery's products as "outstanding." Also speaking in favor of the price increases was Mr. Bob Petrzeka, President of Geode Forestry from southeast Iowa, as well as a private landowner and farmer from the Boone area.

Action: No action taken.

NATURAL RESOURCE COMMISSION, *Alcoholic Liquor, Beer, and Wine Ban at Beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area*, 8/31/16 IAB, ARC 2694C, ADOPTED.

Background. These rules ban alcoholic liquor, beer, and wine at the beaches located in Lake Macbride State Park and Pleasant Creek State Recreation Area. The commission cited the disproportionate number of arrests made and citations issued at these locations relating to alcohol, the high number of personnel needed to respond to such incidents, and increasing the safety and enjoyment of park users as reasons for this rulemaking.

Commission rules define "beach" as "that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines." However, the alcohol ban would not apply to any rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the Department of Natural Resources (DNR).

Commentary. Commission representative Mr. Todd Coffelt noted that the commission had received 17 public comments in support of this rulemaking, four opposed, and two neutral. He stated that no changes had been made to the noticed language.

Committee Members asked what the penalty would be for violating this rule. Mr. Coffelt was initially uncertain, but explained by e-mail after the meeting that a violation would be a simple misdemeanor and result in a \$50 fine. Committee members asked if a violator would be ejected from a park, and he said it would depend on the totality of the circumstances. Committee members asked if there would be a demarcation placed where the 200-foot buffer ends, and Mr. Coffelt said there would not. Committee members asked how many officers DNR has for state parks, and Mr. Coffelt stated that DNR has approximately 34 officers total for all state parks. He explained that each park may need multiple officers, particularly when an officer spends several hours processing an arrest.

Committee members stated that increased enforcement of existing alcohol laws and regulations would be a better approach than an alcohol ban and that such a ban would unfairly penalize responsible drinkers. Committee members also questioned whether the distinction between where a person could drink (a rental shelter if the person pays to reserve it) and where a person could not (the water, sand, and buffer) is appropriate.

Action. A motion for a session delay passed on a seven-to-one vote with two members absent (seven votes required to pass).

ENVIRONMENTAL PROTECTION COMMISSION, *Iowa Antidegradation Implementation Procedure*, 8/31/16 IAB, ARC 2695C, FILED EMERGENCY AFTER NOTICE.

Background. This Department of Natural Resources (DNR) rulemaking revises the Iowa Antidegradation Implementation Procedure. DNR received a petition for rulemaking on April 25, 2016, from the Iowa Association of Municipal Utilities, the Iowa League of Cities, and the Iowa Association of Business and Industry. The petition asked the Environmental Protection Commission (EPC) to modify the process used by DNR in making cost-benefit analyses for its Iowa Antidegradation Implementation Procedure. Specifically, the petition requested EPC to replace a flexible cost-benefit comparison with a bright-line rule for determining when to allow for less degrading wastewater treatment alternatives. The new rule would state that "[a]lternatives costing less than 115 percent of the base cost of the minimum level of pollution control are considered economically efficient." The noticed rulemaking was published in the June 8, 2016, bulletin. DNR received numerous written comments and held a public hearing on June 29. DNR made three changes to the noticed rulemaking but did not modify the substance of the rule amendments. The amended rules became effect

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(Administrative Rules Review Committee continued from Page 5)

tive August 12. DNR made the rulemaking effective prior to the normal 35-day effective date because it believes these amended rules provide clarity to the Antidegradation Implementation Procedure.

Commentary. Mr. Jon Tack, DNR Water Quality Bureau Chief, provided a brief summary of the rulemaking process. He was followed by Mr. Josh Mandelbaum of the Environmental Law and Policy Center (ELPC). According to Mr. Mandelbaum, ELPC was heavily involved when the initial Antidegradation Implementation Procedure rules were adopted in 2010 and remained interested in the rules after their adoption, most notably by suing DNR for not enforcing them. That lawsuit, involving a wastewater treatment project in the city of Clarion, Iowa, led to the petition for rulemaking DNR received. Mr. Mandelbaum noted his appearance at the committee meeting in July to request that DNR convene a stakeholder group to hear concerns about the proposed rulemaking, which DNR declined to do. He described the new rules as a “one size fits all” approach to regulation, and lamented past regulatory efforts in that vein.

A committee member asked Mr. Mandelbaum why ELPC now opposes a rule that it helped write and “imposed” on a community while DNR is seeking to prevent future hardships for cities like Clarion. Mr. Mandelbaum explained that he and ELPC did not see the court’s ruling in the Clarion case as imposing any particular system and that other options were still available.

Another committee member asked Mr. Tack whether the amended rules undermine the federal Clean Water Act or the state’s nutrient reduction strategy. Mr. Tack replied that DNR sees the new rules as fully compliant with the Clean Water Act. He mentioned that other states, including neighboring Wisconsin and Missouri, have adopted bright-line standards just as DNR is doing here. He also noted that DNR has worked with the federal Environmental Protection Agency and was advised that the Antidegradation Implementation Procedure does not need to be adopted in rules, but DNR feels that doing so is beneficial for the public. Similarly, Mr. Tack stated that this rulemaking will protect the nutrient reduction strategy by avoiding a cost-benefit consideration for smaller pollutants.

A committee member also asked why DNR’s rulemaking process appears to have been less collaborative than usual in this instance. Mr. Tack stated that the agency was unsure of how to work with all parties once the petition for rulemaking was filed. He noted that DNR’s main goal with this rulemaking was to resolve uncertainty and that the agency would be open to convening a group to discuss proposals for future amendments if all participants are willing to be flexible. Mr. Mandelbaum noted that the rulemaking petition did not necessarily impose a timeline for adoption of rules.

Action: No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, October 11, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354

Internet Site: <https://www.legis.iowa.gov/committees/committee?groupID=705&ga=86>

LEGAL UPDATES

Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly’s consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

POPULATION REQUIREMENTS FOR REDISTRICTING

Filed by the United States Supreme Court

April 4, 2016

Evenwel v. Abbott

No. 14-940

https://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.pdf

Background Facts and Procedure. After the 2010 Federal Decennial Census, the Texas Legislature redrew its State Senate legislative districts using total population. At the time, Texas was subject to the preclearance requirements of

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the Federal Voting Rights Act and eventually an interim Senate redistricting map for the 2012 elections was drawn, based on total population, by the United States District Court for the Western District of Texas. In 2013, the Texas Legislature adopted the interim Senate map as the permanent Senate map. Plaintiffs, registered Texas voters, sued, claiming that the state legislative Senate map violated the one-person, one-vote principle of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by using total population, and not voter population, in drawing districts of equal population. A three-judge federal district court dismissed the plaintiffs' complaint.

Issue. Does the Equal Protection clause of the Fourteenth Amendment of the United States Constitution require that state legislative redistricting take into account the number of voters rather than total population in creating state legislative districts of equal population?

Holding. The United States Supreme Court (Court) unanimously held (8-0) that a state or locality may draw its state and local legislative districts based on total population.

Majority Opinion. The Court held that constitutional history, judicial precedent, and historical state practice all demonstrate that apportioning legislative districts based on total population is permissible under the Equal Protection Clause of the Fourteenth Amendment. The majority opinion noted that "[i]t cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis." While the Court failed to resolve the question of whether states may use voter-eligible population rather than total population in drawing districts that satisfy the constitutional one-person, one-vote requirement, the majority opinion noted that the one-person, one-vote guarantee and redistricting based upon total population serves both a state's interest in preventing the creation of districts of unequal population that dilute the voting strength of citizens in larger population districts and its interest in ensuring equality of representation.

Concurring Opinions. Two Justices concurred separately in the judgment of the Court. Justice Thomas concluded that states should be given wide latitude in selecting the population base for apportionment. Justice Alito argued that constitutional history regarding apportionment of members of Congress and the adoption of the Fourteenth Amendment does not clearly establish that total population should be constitutionally required for legislative redistricting.

Impact on Iowa Law. Iowa Code section 42.2 provides that the Legislative Services Agency shall use the population data obtained by Iowa from the United States Bureau of the Census under United States Pub. L. No. 94-171, for the purpose of preparing congressional and legislative redistricting plans. Based on this federal statute, the Census Bureau reports to each state total population and the population of persons 18 years of age and older, including population counts by race and ethnicity, for each geographic unit needed by that state for use in the redistricting process. As a result, the Legislative Services Agency has always used total population counts provided by the Census Bureau for purposes of preparing proposed congressional and legislative redistricting plans. The Court's decision determined that the use of total population counts for legislative redistricting is constitutional.

LSA Monitor. Ed Cook, Legal Services (515) 281-3994

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